IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No. 5720/Del/2018 (A.Y 2014-15)

Krishan Kant Kohli C/o. RRA Taxindia, D-28, South Extension, Part-1 New Delhi **PAN No:AALPK4611N**	Vs.	DCIT Central Circle-II, Gurgaon, Haryana
(Appellant)		**(Respondent)**

ITA No. 6363/Del/2018 (A.Y 2015-16)

ACIT Central Circle-II Gurgaon, Haryana	Vs.	Krishan Kant Kohli A-2, Geetanjali Enclave, New Delhi **PAN No:AALPK4611N**
(Appellant)		**(Respondent)**

Appellant by	Sh. Salil Agarwal, Adv & Sh. Deepesh Garg, Adv
Respondent by	Sh. Dayainder Singh Sidhu, CIT(DR)

Date of Hearing	11/12/2024
Date of Pronouncement	16/12/2024

ORDER

PER YOGESH KUMAR U.S.:-

The above Appeal filed by the Assessee for Assessment Year 2014-15 aggrieved by the order of the Ld. CIT(A) dated 28/07/2018 and the Department of Revenue preferred the Appeal against the order of the Ld. CIT(A) dated 28/07/2018 for Assessment Year 2015-16.

2. The Assessee's grounds of Appeal for Assessment Year 2014-15 are as under: -

"1) That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. A.O. in assuming jurisdiction u/s 153A and the consequent assessment proceedings in the case are bad in law and against the facts and circumstances of the case and void- abinitio and basic jurisdictional conditions and pre-requisites under section 153A were not met.

2) That in any case and in any view of the matter, the assessment framed under section 153A of the Act, is bad in law and against the facts and circumstances of the case.

3) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in restricting the addition to the extent of Rs.6,43,935/- u/s 2(22)(e) and that too by recording incorrect facts and without any basis, material or evidence and more so when no incriminating material was found as a result of search.

4) That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 6,43,935/- u/s 2(22)(e) is bad in law and against the facts and circumstances of the case.
That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. A.O. in passing the impugned assessment order without there being requisite approval in terms of section 153D and in any case approval if any is mechanical without application of mind and is no approval in the eyes of law.

6) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in passing the impugned order and that too without giving adequate opportunity and without observing the principle of natural justice.

7) That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other."

2.1 The Revenue's Grounds of Appeal for Assessment Year 2015-16 are as under:-

"i) Whether on the facts and in the circumstances of the case the Ld.CIT(A) failed to appreciate that the Hon'ble Supreme Court in the case of CIT v. Mukundray K. Shah, 290 ITR 433 under identical circumstances has upheld the addition of deemed dividend u/s 2(22)(e) made by the AO.

(ii) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in concluding that the case of appellant(s) is neither covered by the judgment of the Hon'ble Supreme Court nor the definition of 'deemed dividend' u/s 2(22)(e) of the Act.

(iii) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in concluding that the accumulated profits of M/s Olympus Realtors Pvt. Ltd. shall be taken into consideration for the purpose of determining deemed dividenddespite the provisions of deemed dividend u/s 2(22)(e) providing thatthe accumulated profits of the company advancing the sum by way of loan or advance to the shareholder shall be taken into consideration.

(iv) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in working out and taking into consideration the accumulated profit of the company M/s Olympus Realtors'Pvt. Ltd. at nil instead of that of M/s Orient Craft Ltd.for the purpose of application of section 2(22)(e).

v) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in concluding that there has been no fund flow from M/s Orient Craft Limited during the year under consideration which is contrary to the records ason perusal of ledger account of M/s Super Connection India Pvt. Ltd. in the books of M/s Orient Craft Ltd., it is seen that during the year under consideration, there has been fund flow of more than Rs.50 crore from M/s Orient Craft Ltd. to M/s Super Connection IndiaPvt. Ltd.

(vi) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate that such advances/loans which have been routed through different entities to the assessee with the only

intention to subvert the provisions of sections 2(22)(e) would constitute deemed dividend.

(vii) The appellant craves to add, amend, alter or modify any grounds of appeal at the time of hearing."

3. Since similar issues are involved and the above Appeals are pertaining to single Assessee, both the Appeals are heard together and decided in this common order. For the sake of convenience, brief facts of the case for Assessment Year 2014-15 are considered, which are as under: -

A search was conducted on 29/04/2015 at the various premises for Orient Craft group of cases. The Assessee was also covered u/s 132 of the Income Tax Act, 1961, ('Act' for short). An assessment order u/s 153A r.w. Section 143(3) of the Act came to be passed on 26/12/2017 by making addition of Rs. 6,60,000/- on account of deemed dividend u/s 2(22) (e) of the Act. Aggrieved by the assessment order dated 26/12/2017, the Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 28/07/2018,dismissed the Appeal of the Assessee vide common order along with two more Assessees i.e. Sh. Sudhir Dhingra and Sh. Anoop Thatai. The Ld. CIT(A) has also passed common order for Assessment Year 2015-16 pertaining to Assessee and very same two more Assesses i.e. Sh. Sudhir Dhingra and Sh. Anoop

Thatai, wherein the Ld. CIT(A) allowed the Appeal of the Assessees which has been challenged by the Department of Revenue in their Appeal for Assessment Year 2015-16.

4. The Ld. Counsel for the Assessee submitted that the issue involved in the present Appeals are covered in favour of the Assessee by the order of the Tribunal for Assessment Year 2014-15 and 2015-16 in the case of Sh. Sudhir Dhingra and Sh. Anoop Thatai, therefore, sought for allowing the Appeal of the Assessee and for dismissing the Appeal of the Department in terms of the order of the Tribunal dated 13/01/2022 in ITA No. 6365 to 6361/Del/2018 by following the principles of consistency.

5. Per contra, the Ld. Departmental Representative by relying on the assessment orders sought for dismissal of the Appeal of the Assessee and prayed for allowing the Appeal of the Revenue.

6. We have heard both the parties and perused the material available on record. In both the Assessment Years i.e. Assessment Year 2014-15 and 2015-16 the Ld. CIT(A) has passed common order along with two other Assesees i.e. Sh. Sudhir Dhingra and Sh. Anoop Thatai.As against the orders of the Ld. CIT(A) for Assessment Year 2014-15 and 2015-16,

the Assessee thereon Sh. Sudhir Dhingra and Sh. Anoop Thatai and the Department have taken up the issue before the Tribunal and the Tribunal vide order dated 13/01/2022 in ITA No. 6365 to 6361/Del/2018 decided the issue in favour of the Assessee in following manners:-

6.1 Order of the Tribunal for Assessment Year 2015-16 in the case of Sh. Sudhir Dhingra:-

> *"22. We have considered the arguments from both the sides and have gone through the Orders passed by the authorities below and also gone through the written submissions filed by the assessee and also referred various pages of paper book filed before us as referred to before us. We have summed up the findings of the assessment order and appellate order hereinabove. Before we discuss the merits of the arguments of the assessee& hat of the revenue, we consider it expedient to reproduce the relevant portion of the written submissions filed by the assessee for A.Y. 2014-15 as under:-*
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> *GROUND NO. 1 General and specific submissions have been under the respective grounds of appeals.*
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> *GROUND NO. 2 to 5 Ld. A.O. made addition of Rs. 17,78,30,000/- on account of deemed dividend u/s 2(22)(e) on the ground that the said amount was transferred by M/s Orient Craft Ltd. (OCL) during the year under appeal to the appellant, through M/s Super Connections P. Ltd. (SCPL), which in turn was given to M/s Olympus Realtors P Ltd . (ORPL) which in turn has been paid to M/s SKA Enterprises (SKAE) which in turn has been received by the appellant and thus, according to Ld. A.O. amount received by the appellant was deemed dividend assessable u/s 2(22)(e) of the Income Tax Act, 1961. Since it has been treated as taxable income in the hands of the appellant, hence the present appeal.*
>
> *1)…… ……*
> *2) Without prejudice to above, it is submitted that in fact the impugned addition could not be made u/s 2(22)(e) as there was no 'loan' or 'advance' from M/s OCL to the appellant. According to Ld. A.O. also as mentioned in the impugned order, the loan or advance*

has been received by the appellant from M/s SKAE. That being so, where is the question of applying and invoking section 2(22)(e), which requires that the loan should be advanced by a closely held company. It goes without saying that M/s SKAE is not a company and impugned loan has not been received by the appellant from M/s OCL. Therefore, impugned addition made does not stand to the test of law as explained above and it is thus requested that the addition made may please be deleted.

3) Without prejudice to above, it is submitted further that the amount was given by OCL to SCPL which is an independent company and that too during the course of business. It goes without saying that M/s SCPL is an independent assessee, which has been assessed to tax even in earlier years which is evident from the copies of assessment orders of SCPL for A.Y 2005-06 & 2008-09 which are enclosed at PB439-446. Therefore when amount has been given by M/s OCL to M/s SCPL, where is the question of holding that the amount was given by OCL to the appellant instead, and where is the question of assessing that amount as deemed dividend in the hands of the appellant Individual. Thus, action of Ld. AO in disregarding the corporate character of SCPL is misplaced on facts and in law and so is the action of making impugned addition in the hands of the appellant. It is thus requested that the addition under appeal may please be deleted for the above stated submissions too.

4) Without prejudice to above, it is submitted that M/s ORPL was one of the partners in M/s SKAE and infused its capital and no loan or advance was given to M/s SKAE by ORPL. Appellant too is the partner in SKAE. Appellant withdrew the amount as partner of SKAE and thus, how could the amount received by the appellant from M/s SKAE be treated as loan given by M/s OCL so as to constitute deemed dividend in the hands of the appellant. In fact Ld. AO is going entity after entity and that too by disregarding the nature of payment made by each entity/person to other. Ld. AO is disregarding the legal character of the entities also which is not permissible in law particularly when legal character of such entities have all along been accepted in their assessments. Thus, action of Ld. AO in making the impugned addition in the hands of the appellant as deemed dividend is neither here nor there and it is thus prayed that the addition made may please be deleted.

5) Without prejudice to above, it is submitted further that going by the logic of Ld. AO though denied vehemently but accepting for the sake of arguments, if at all there was any deemed dividend, it could be in the hands of M/s ORPL which received the amount first, and three Individuals who are the shareholders in M/s OCL for more

than 10% were also having substantial interest in M/s ORPL. Thus, from this standpoint also, there was no question of making impugned addition as deemed dividend in the hands of the appellant. It is therefore prayed that the same may please be deleted in view of the above submissions also.

6) Without prejudice to above, it is submitted that PB 524 would show that assessee paid Rs. 10 Crore on 12.03.2013(3.75 Crore+ 3.50 crore + Rs. 2.75 Crore)and therefore, to this extent in A.Y. 2014-15 deemed divided amount should be reduced. PB 526-527 is the copy of account of the assessee in the books of M/s SKAE for A.Y. 2014-15. Reliance is placed on the following:-

Commissioner of Income Tax vs. Francis Wacziarg High court of Delhi (2013) 353 ITR 0187: (2011) 203 taxman 0391 asst. Year 2003-04

Dividend—Deemed dividend under s. 2(22)(e)—Credit balance in accounts—Confirmations and copies of accounts showing that the amounts appearing in the accounts were in fact receipts due to assessee, in his normal course of business dealings with the companies—Such receipts from these companies cannot be treated as loans and advances—AO was not justified in treating these receipts as deemed dividend under s. 2(22)(e)

7) The above, factual and legal situations were explained during the course of assessment proceeding also and are explained before your goods also with the help of following pleadings and evidences:- PB 150, 151, 152-153 are copies of submissions made to Ld. AO PB 526-527,536 is the copy of account of the appellant in the books of SKAE

Therefore viewed from any angle the impugned addition made is liable to be deleted and it is prayed that the same may please be deleted. However, certain adverse observations have been made by Ld. AO which are met as under:-

a) Ld. AO has mentioned that perusal of books of accounts of OCL, SCPL, ORPL & SKAE seized during search revealed that OCL is routing huge amount of funds through some fictitious entities of the group and finally to the shareholders of OCL, appellant being one of the three shareholders.

In reply, it is submitted that first of all there is no fictitious entities as alleged. All the entities are artificial juridical persons, which have

been assessed to tax in all these years as is evident from copies of their income tax assessment orders of earlier years enclosed at PB 341- 376, 439-446. Thus, this allegation of there being any fictitious entity is absolutely denied and is contrary to material on record. Second, the fact of the payments made by these entities to other entities/persons are part of audited accounts and returns of income and thus it is wrong to say that it was noticed from the books of accounts of these entities seized during search that payments were being made by these entities to other entities/persons. Thus, this averment/finding by Ld. AO is only to show that but for the search this could not come to be known to him. But as submitted above, this finding is not correct.

b) Ld. AO has mentioned that statements of Mr. Dhanda and Mr. Nagpal directors of SCPL revealed during search that SCPL is paper 38 company as books are maintained at the premises of OCL and so on and so forth.

In reply, it is submitted that SCPL is a company registered with ROC and is assessed to tax for number of years as is evident from its income tax assessment orders of earlier years enclosed at PB 439-446. Merely because the shareholders of SCPL were employees of OCL and books were being maintained at the premises of OCL do not make SCPL as paper-company. Operational conveniences of these two shareholders of SCPL to maintain books at the premises of OCL may have led this but merely for that reason, SCPL cannot become paper company to the utter disregard to the past assessment orders and scale of business conducted by SCPL. Attempt of Ld. AO to show closeness of the shareholders of SCPL with OCL group does not make substantive SCPL to turn to a paper company. Other allegations of Ld. AO qua SCPL too stems from the colored vision of Ld. AO. Even statements if carefully gone through do not support what Ld. AO has inferred arbitrarily.

c) Ld. AO has mentioned that advance or loan to SCPL was just to by pass the provision of section 2(22)(e) and money trail clearly established that the ultimate beneficiaries are the shareholders of OCL or companies/firms in which they have substantial interest.

In reply, it is submitted that advance was given by OCL to SCPL as advance against trade and thus inference that provision of section 2(22)(e) was sought to be bye passed is misconceived. Moreover, when the case of Ld. AO is that beneficiaries are company (ORPL)/firm (SKAE) first, deemed dividend could be taxed in the hands of such company/firm and not in the hands of the appellant.

This is being submitted on without prejudice basis without conceding anything.

d) Ld. AO has relied upon the decision CIT vs. Mukundray K Shah 209 CTR 97 (SC) but the facts of that case were different and hence the same could not be applied here. Thus, all the objections of Ld. AO may please be rejected and the case of the appellant may please be accepted in view of the above submissions.

23.According to the revenue, there was loan or advance from M/s Orient Craft Ltd. (OCL) to the appellant, whereas the case of the assessee was that there was no loan or advance received by the assessee, much less from M/s OrientCraft Ltd. and further, for that matter, no loan was received by the assessee from M/s Olympus Realtors P. Ltd. and hence there was no question of any deemed dividend to be assessed in his hands.

24. It is noted that in order to attract the fiction of section 2(22(e), it is essential that the elements of that section must be found applicable. Since section 2(22)(e) treats the loan or advance as dividend, hence it is essential to give a strict interpretation to such fiction.We have gone through section 2(22)(e) and the facts of the present case. There is no loan or advance received by the assessee from M/s Orient Crafts Ltd. It is seen that even as per the case of the A.O. made in the assessment order, the loan or advance has been received by the assessee from M/s SKA Enterprises which was a partnership firm. Therefore, as per the admitted case of the A.O., such loan or advance having notbeen received by the assessee from a closely held company i.e. from Orient Craft Ltd. or 40 Olympus Realters P Ltd. cannot be treated as dividend u/s 2(22)(e), since the first ingredient of section 2(22)(e) itself is not met in this case. As per the case of made out by Ld. A.O. in the assessment order, amount in question has not been received by the assessee from M/s Orient Craft Ltd. Rather it is seen that CIT (A) has recorded a finding at para 7.3.2 of the appeal order that Orient Craft P Ltd. had given advance of Rs. 28,84,90,373/- to M/s Super Connection India P. Ltd. It is important to submit that there is no appeal filed by the revenue against such finding of fact recorded by CIT (A).

25. Moreover, it is also seen that advance was given by M/s Orient Craft Ltd. to M/s Super Connection IndiaP. Ltd. The said M/s Super Connection India P Ltd. has been held by us as an independent and unrelated company in our order for A.Y. 2010-11 to A.Y. 2013-14 passed separately in ITA No. 6356 to 6359/Del/2018. Therefore, when M/s Super Connection India P. Ltd. which was an

independent assessee and has been assessed to tax and when advance has admittedly been given by M/s Orient Craft Ltd. to M/s Super Connection India P. Ltd., how can it be assumed or held that the assessee received any loans and advance from M/s Orient Craft Ltd. After all the corporate identity and character and an independent status as an independent assessee and that too unrelated to the assessee that M/s Super Connection India P.Ltd. enjoys, such status cannot be permitted to be breached, more so when M/s Super Connection India P. Ltd. is an independent assessee, in which there was no control of any of the shareholders of M/s Orient Craft Ltd. Therefore, there was no question of treating any amount as deemed dividend u/s 2(22(e) in the hands of the assessee in the background of the facts of the present case and in the light of the finding recorded by 41 the first appellate authority as to the nature of the advance given by Orient Craft Ltd. to Super Connection India P Ltd. It is also noticed that CIT(A) has recorded a finding in para 7.3.2 (b) of the appeal order against which revenue is not in appeal that during the year under consideration capital advance amounting to Rs. 26,24,50,000/- was given by M/s Super Connections India P. Ltd. to M/s Olympus Realtors P. Ltd. Therefore, when there was specific finding of the nature of capital advance given by M/s Super Connection India P. Ltd. to M/s Olympus Realtors P. Ltd. as capital advance, where was the question of saying in the same breath that assessee received the advance and that too from M/s Orient Craft P. Ltd. and where was the question of applying the deeming fiction of section 2(22)(e) in the hands of the assessee. Therefore, for this reason also we are unable to uphold the order of Ld. CIT (A) in the case of the assessee in so far it relates to the confirmation of addition made under section 2(22)(e) of the Income Tax Act. Going further on the next argument on behalf of the assessee, it is noticed that, there was no loan or advance given by M/s Olympus Realtors P. Ltd. to M/s SKA Enterprises. Assessee was also partner in M/s SKA Enterprises and withdrew the amount as partner. In our considered opinion, such amount so withdrawn by the assessee in the capacity of the partner of the said firm cannot be covered within the meaning of deemed dividend under section 2(22)(e) of the Income Tax Act. Even CIT(A) in para 7.3.2(c) of the appeal order has recorded a factual finding that M/s OlympusRealtors P. Ltd.has made investment in M/s SKA Enterprises amounting to Rs. 35,21,49,597/-. Against this finding of fact, no appeal has been filed by the revenue nor has any rebuttal been made on behalf of the revenue. Therefore, when investment was made by M/s Olympus 42 Realtors P. Ltd. in M/s SKA Enterprises and assessee as partner has withdrawn amount from the partnership firm namely M/s SKA Enterprises in which assessee

was one of the partners, there was no question of treating such amount received by the assessee as loan or advance that too from M/s Orient Craft Ltd. and / or from M/s Olympus Realtors P. Ltd. A.O. has disregarded the nature of payment made by each entity to the other entityregarding which the factual findings recorded by CIT(A) in his order have attained finality in the absence of any rebuttal or any appeal preferred by Revenue. Ld. AO has disregarded also the effect of legal character of all the entities more so when there was nothing adverse found in the assessments of these entities.

26. We have already mentioned earlier that section 2(22)(e) creates deeming fiction which gets triggers when the conditions mentioned in the section are met and not otherwise. It is settled principle of law that the deeming provisions are required to be construed strictly and nothing beyond which has been contemplated in the section can be inferred nor can it can be extended, more so in the light of factual findings in the present case having regard to the nature of the payments made by one entity to another as recorded by CIT(A) against which revenue has not filed any appeal nor has made any rebuttal during the course of hearing. Therefore, there is no question of treating the amount withdrawn by the assessee as partner from the partnership firm namely M/s SKA Enterprises in the nature of loan and advance and treat it as deemed dividend under section 2(22)(e) of the Income Tax Act. None of the ingredients of section 2(22)(e) stand satisfied in the instant case. We have also gone through part of written submissions as reproduced above where rebuttal of each and every adverse observation made by the 43 assessing officer has been made by the assessee and we are in agreement with the assessee on all those rebuttals.

27. The reliance of the decision of Hon'ble Supreme Court decision in the case of "CIT Vs Mukundray K. Shah, Citation No. [2007] 160 Taxman 276 (SC)/[2007J 290 ITR 433 (SC)/[2007] 209 CTR 97 (SC): is misplaced in the background of the facts of this case and the fact of that case more so when in the instant case the nature of payment by one entity to another has been held to be of a particular character by CIT(A) against which revenue is not in appeal. We have dealt this aspect in fair elaborate manner hereinabove and do not consider to repeat.

28. Ld. CIT (A) despite recording a clear cut finding as to the nature of payments made by one entity to another in para 7.3.2 of the appeal order has committed grave error in concluding without any basis, material or evidence that M/s Super Connections India P.

Ltd., M/s Olympus Realtors P. Ltd. andM/s SKA Enterprises were used as conduits. Therefore, we are unable to subscribe to this bald conclusion of CIT(A). We thus hold that the additions sustained on account of deemed dividend u/s 2(22)(e) were sustained by CIT(A) contrary to the factual position and contrary to the law contained in this regard. Hence, we reverse the Order of CIT(A) and delete the addition of Rs. 17,33,98,000/- which was sustained in first appeal out of the total addition of Rs.17,78,30,000/-made in the assessment order u/s 2(22)(e). It is clarified that revenue was not appeal before us for the relief of Rs. 44,32,000/- allowed by learned first appellate authority. No other ground was argued before us. Hence appeal of the assessee is partly allowed.

6.2 Order of the Tribunal in Assessment Year 2015-16 in the case of Sudhir Dhingra:

"34. We have heard both the parties and have gone through the orders passed by the authorities below and also gone through the written 47 submissions filed by the assessee and also the relevant documents referred to from the paper book filed before us. We have summed up the findings of the assessment order and appellate order hereinabove. Before we discuss the merits of the arguments of the assessee& those of the revenue, we consider it expedient to reproduce the relevant portion of the written submissions filed by the assessee for A.Y. 2015-16 as under:-

GROUND NO. 1 General and specific submissions have been under the respective grounds of appeals.

GROUND NO. 2 to 5 Ld. A.O. made addition of Rs. 23,71,65,000/- on account of deemed dividend u/s 2(22)(e) on the ground that the said amount was transferred by M/s Orient Craft Ltd. (OCL) during the year under appeal to the appellant, through M/s Super Connections P. Ltd. (SCPL), which in turn was given to M/s Olympus Realtors P Ltd . (ORPL) which in turn has been paid to M/s SKA Enterprises (SKAE) which in turn has been received by the appellant and thus, according to Ld. A.O. amount received by the appellant was deemed dividend assessable u/s 2(22)(e) of the Income Tax Act, 1961. Since it has been treated as taxable income in the hands of the appellant, hence the present appeal.

1).....

2) Without prejudice to above, it is submitted that in fact the impugned addition could not be made u/s 2(22)(e) as there was no

'loan' or 'advance' from M/s OCL to the appellant. According to Ld. A.O. also as mentioned in the impugned order, the loan or advance has been received by the appellant from M/s SKAE. That being so, where is the question of applying and invoking section 2(22)(e), which requires that the loan should be advanced by a closely held company. It goes without saying that M/s SKAE is not a company and impugned loan has not been received by the appellant from M/s OCL. Therefore, impugned addition made does not stand to the test of law as explained above and it is thus requested that the addition made may please be deleted.

3) Without prejudice to above, it is submitted further that the amount was given by OCL to SCPL which is an independent company and that too during the course of business. It goes without saying that M/s SCPL is an independent assessee, which has been assessed to tax even in earlier years which is evident from the copies of assessment orders of SCPL for A.Y 2005-06 & 2008-09 which are enclosed at PB439-446. Therefore when amount has been given by M/s OCL to M/s SCPL, where is the question of holding that the amount was given by OCL to the appellant instead, and where is the question of assessing that amount as deemed dividend in the hands of the appellant Individual. Thus, action of Ld. AO in disregarding the corporate character of SCPL is misplaced on facts and in law and so is the action of making impugned addition in the hands of the appellant. It is thus requested that the addition under appeal may please be deleted for the above stated submissions too.

4) Without prejudice to above, it is submitted that M/s ORPL was one of the partners in M/s SKAE and infused its capital and no loan or advance was given to M/s SKAE by ORPL. Appellant too is the partner in SKAE. Appellant withdrew the amount as partner of SKAE and thus, how could the amount received by the appellant from M/s SKAE be treated as loan given by M/s OCLso as to constitute deemed dividend in the hands of the appellant. In fact Ld. AO is going entity after entity and that too by disregarding the nature of payment made by each entity/person to other. Ld. AO is disregarding the legal character of the entities also which is not permissible in law particularly when legal character of such entities have all along been accepted in their assessments. Thus, action of Ld. AO in making the impugned addition in the hands of the appellant as deemed dividend is neither here nor there and it is thus prayed that the addition made may please be deleted.

5) Without prejudice to above, it is submitted further that going by the logic of Ld. AO though denied vehemently but accepting for the

sake of arguments, if at all there was any deemed dividend, it could be in the hands of M/s ORPL which received the amount first, and three Individuals who are the shareholders in M/s OCL for more than 10% were also having substantial interest in M/s ORPL. Thus, from this standpoint also, there was no question of making impugned addition as deemed dividend in the hands of the appellant. It is therefore prayed that the same may please be deleted in view of the above submissions also.

Reliance is placed on the following:-

Commissioner of Income Tax vs. Francis Wacziarg High court of Delhi (2013) 353 ITR 0187: (2011) 203 taxman 0391 asst. Year 2003-04

Dividend—Deemed dividend under s. 2(22)(e)—Credit balance in accounts—Confirmations and copies of accounts showing that the amounts appearing in the accounts were in fact receipts due to assessee, in his normal course of business dealings with the companies—Such receipts from these companies cannot be treated as loans and advances—AO was not justified in treating these receipts as deemed dividend under s. 2(22)(e)

6) The above, factual and legal situations were explained during the course of assessment proceeding also and are explained before your goods also with the help of following pleadings and evidences:- PB 150, 151, 152-153 are copies of submissions made to Ld. AO PB 529-531, 536-537 is the copy of account of the appellant in the books of SKAE

Therefore viewed from any angle the impugned addition made is liable to be deleted and it is prayed that the same may please be deleted.

However, certain adverse observations have been made by Ld. AO which are met as under:-

a) Ld. AO has mentioned that perusal of books of accounts of OCL, SCPL, ORPL & SKAE seized during search revealed that OCL is routing huge amount of funds through some fictitious entities of the group and finally to the shareholders of OCL, appellant being one of the three shareholders.

In reply, it is submitted that first of all there is no fictitious entities as alleged. All the entities are artificial juridical persons, which have

been assessed to tax in all these years as is evident from copies of their income tax assessment orders of earlier years enclosed at PB 341-376, 439-446. Thus, this allegation of there being any fictitious entity is absolutely denied and is contrary to material on record. Second, the fact of the payments made by these entities to other entities/persons are part of audited accounts and returns of income and thus it is wrong to say that it was noticed from the books of accounts of these entities seized during search that payments were being made by these entities to other entities/persons. Thus, this averment/finding by Ld. AO is only to show that but for the search this could not come to be known to him. But as submitted above, this finding is not correct.

b) Ld. AO has mentioned that statements of Mr. Dhanda and Mr. Nagpal directors of SCPL revealed during search that SCPL is paper company as books are maintained at the premises of OCL and so on and so forth.

In reply, it is submitted that SCPL is a company registered with ROC and is assessed to tax for number of years as is evident from its income tax assessment orders of earlier years enclosed at PB 439-446. Merely because the shareholders of SCPL were employees of OCL and books were being maintained at the premises of OCL do not make SCPL as paper-company. Operational conveniences of these two shareholders of SCPL to maintain books at the premises of OCL may have led this but merely for that reason, SCPL cannot become paper company to the utter disregard to the past assessment orders and scale of business conducted by SCPL. Attempt of Ld. AO to show closeness of the shareholders of SCPL with OCL group does not make substantive SCPL to turn to a paper company. Other allegations of Ld. AO qua SCPL too stems from the colored vision of Ld. AO. Even statements if carefully gone through do not support what Ld. AO has inferred arbitrarily.

c) Ld. AO has mentioned that advance or loan to SCPL was just to by pass the provision of section 2(22)(e) and money trail clearly established that the ultimate beneficiaries are the shareholders of OCL or companies/firms in which they have substantial interest.

In reply, it is submitted that advance was given by OCL to SCPL as advance against trade and thus inference that provision of section 2(22)(e) was sought to be bye passed is misconceived. Moreover, when the case of Ld. AO is that beneficiaries are company (ORPL)/firm (SKAE) first, deemed dividend could be taxed in the hands of such company/firm and not in the hands of the appellant.

This is being submitted on without prejudice basis without conceding anything.

d) Ld. AO has relied upon the decision CIT vs. Mukundray K Shah 209 CTR 97 (SC) but the facts of that case were different and hence the same could not be applied here. Thus, all the objections of Ld. AO may please be rejected and the case of the appellant may please be accepted in view of the above submissions.
GROUND NO. 6 Ld. A.O. has passed the impugned order without valid statutory approval of Joint Commissioner in terms of section 153D.

It is respectfully submitted that as per section 153D no assessment order u/s 153A or u/s 153C can be passed without obtaining the prior approval of Joint CIT, which in the present case has not been obtained in as much as the approval which has been accorded is mechanical approval bereft of any application of mind as can be seen from the approval enclosed in the paper book. It has been held in the 53 following judicial decision that mechanical approval is no approval in the eyes of law.

- Hon'ble ITAT Mumbai 'F' Bench in the case ofSmt. Shreelekha Damani vs. Dy. CIT 125 DTR (Mumbai 'F') 263
- Chhugamal Rajpal vs. S.P. Chaliha&Ors. (1971) 79 ITR 0603
- United Electrical Company (P) Ltd. vs. Commissioner of Income Tax &ors. (2002) 258 ITR 0317

GROUND NO. 7 General and specific submissions have been under the respective grounds of appeals.
GROUND NO.8 Not pressed as credit has been allowed in order u/s 154.
GROUND NO. 9 Consequential
GROUND NO. 10 General

35. According to the case of revenue, there was loan or advance from M/s Orient Craft Ltd. (OCL) & Olympus Realters P Ltd.to the appellant, whereas the case of the assessee was that there was no loan or advance received by the assessee, much less from M/s Orient Craft Ltd., and further, for that matter, no loan was received by the assessee from M/s Olympus Realtors P. Ltd. and hence there was no question of any deemed dividend to be assessed in his hands.

36. In order to attract the fiction of section 2(22(e), it is essential that the elements mentioned in the section must be found applicable.

Since section 2(22)(e) treats the loan or advance as dividend, hence it is essential to give a strict interpretation to such fiction. Looking to the facts of the present case, we find that, there is no loan or advance received by the assessee from M/s Orient Crafts Ltd. or the matter of fact from the other company namely, Olympus Realters P Ltd. It is seen that even as per the case of the A.O. made in the assessment order, the loan or advance has been received by the assessee from M/s SKA Enterprises which was a partnership firm. Therefore, as per the admitted case of the A.O., such loan or advance having not been received by the assessee from a closely held company, i.e., from Orient Craft Ltd. or Olympus Realters P Ltd. hence cannot be treated as dividend u/s 2(22)(e), since the first ingredient or any of the other conditions, of section 2(22)(e) itself is not met in this case. As per the case of made out by Ld. A.O. in the assessment order, amount in question has not been received by the assessee from M/s Orient Craft Ltd. Rather it is seen that CIT (A) has recorded a finding at para 7.1.2 (a) of the appeal order that Orient Craft P Ltd. had not given advance to M/s Super Connection India P. Ltd during the year under appeal. It is important to note here that there is no appeal filed by the revenue against such finding of fact recorded by CIT (A).

37. Moreover, it is also seen as a fact that advances was not given by M/s Orient Craft Ltd. to M/s Super Connection India P. Ltd during the year under appeal. In any case, the said M/s Super Connection India P Ltd. has been held by us as an independent and unrelated company in our order for A.Y. 2010-11 to A.Y. 2013-14 passed separately in ITA No. 6356 to 6359/Del/2018. Therefore, when M/s Super Connection India P. Ltd. which was an independent assessee and has been assessed to tax and when no advance has admittedly been given by M/s Orient Craft Ltd. to M/s Super Connection India P. Ltd. during the year under appeal, how can it be assumed or held that the assessee received any loans and advance from M/s Orient Craft Ltd. After all the corporate identity and 55 character & an independent status as an independent assessee and that too unrelated to the assessee that M/s Super Connection India P. Ltd. enjoys, such status cannot be permitted to be breached, more so when M/s Super Connection India P. Ltd. is an independent assessee, in which there was no control of any of the shareholders of M/s Orient Craft Ltd. Therefore, there was no question of treating any amount as deemed dividend u/s 2(22(e) in the hands of the assessee in the background of the facts of the present case and in the light of the finding recorded by the first appellate authority as to the nature of the advance given by Orient Craft Ltd. to Super Connection India P Ltd. In fact finding recorded

by CIT(A) in this year is that no fresh advance has been given by Orient Craft Ltd. to Super Connection India P Ltd. during the year under consideration which we have already taken note of hereinabove. It is also noticed by us that CIT (A) has recorded a finding in para 7.1.2 (b) of the appeal order against which revenue is not in appeal that during the year under consideration that no fresh advance was given even by M/s Super Connections India P. Ltd. to M/s Olympus Realtors P. Ltd during the year under appeal. Therefore, when there was specific finding that no advance was given by M/s Super Connection India P. Ltd. to M/s Olympus Realtors P. Ltd. during the year under appeal, where was the question of saying in the same breath that assessee received the advance and that too from M/s Orient Craft P. Ltd.and/or Olympus Realters P Ltd. and where was the question of applying the deeming fiction of section 2(22)(e) in the hands of the assessee on such wrong presumption of facts. Therefore, for this reason also we uphold the order of Ld. CIT(A) in the case of the assessee in respect of the deletion of addition made under section 2(22)(e). Ergo, there was no loan or advance given by M/s 56 Olympus Realtors P. Ltd. to M/s SKA Enterprises. Assessing Officer case is that Assessee was also partner in M/s SKA Enterprises and withdrew the amount as partner and therefore it should be inferred as loan from M/s Orient Craft P. Ltd. In our considered opinion, such amount so withdrawn by the assessee in the capacity of the partner of the said firm cannot be covered within the meaning of deemed dividend under section 2(22)(e) Act as it tantamount to going beyond the deeming fiction envisaged in the section. Even CIT(A) in para 7.1.2(c) of the appeal order has recorded a factual finding that M/s Olympus Realtors P. Ltd. has made investment in M/s SKA Enterprises amounting to Rs. 39,90,40,000/-. Against this finding of fact also, no appeal has been filed by the revenue nor has any rebuttal been made on behalf of the revenue. Therefore, when investment was made by M/s Olympus Realtors P. Ltd. in M/s SKA Enterprises and assessee as partner has withdrawn amount from the partnership firm namely, M/s SKA Enterprises in which assessee was one of the partners, there was no question of treating such amount received by the assessee as loan or advance that too from M/s Orient Craft Ltd. and / or from M/s Olympus Realtors P. Ltd. It goes without saying that there is substantial difference between investment and advance. A.O. has disregarded the nature of payment made by each entity to the other entity regarding which the factual findings recorded by CIT (A) in his order have attained finality in the absence of any rebuttal or any appeal preferred by Revenue. Ld. AO has disregarded also the effect of legal character of all the entities more so when there was nothing adverse found in the assessments of these entities. We have already

mentioned earlier that section 2(22)(e) creates fiction which operates very harshly and settled principle of law that provisions of law 57 of such a nature are required to be construed strictly, more so in the light of factual findings as to the nature of these payments made by one entity to another recorded by CIT(A) against which revenue has made any rebuttal during the course of hearing. Therefore, there is no question of treating the amount withdrawn by the assessee as partner from the partnership firm namely M/s SKA Enterprises in the nature of loan and advance and treat it as deemed dividend under section 2(22)(e) of the Income Tax Act. None of the ingredients of section 2(22)(e) stand satisfied in the instant case. We have through the written submissions also reproduced above where rebuttal of each and every adverse observation made by the assessing officer has been made by the assessee and we are in agreement with the assessee on all those rebuttals.

38. The reliance of the decision of Hon'ble Supreme Court decision in the case of "CIT Vs Mukundray K. Shah, Citation No. [2007] 160 Taxman 276 (SC)/[2007J 290 ITR 433 (SC)/[2007] 209 CTR 97 (SC): is misplaced in the background of the facts of this case and the fact of that case more so when in the instant case the nature of payment by one entity to another has been held to be of a particular character by CIT(A) against which revenue is not in appeal. We have dealt this aspect in fair elaborate manner hereinabove and do not consider to repeat.
39. Accordingly, we hold that the addition of Rs. 23,71,65,000/- deleted on account of deemed dividend u/s 2(22)(e) by CIT(A) was rightly deleted. Hence, we uphold the Order of CIT(A) who deleted the addition made u/s 2(22)(e). No other arguments were made. In the result the appeal of the revenue is dismissed."

7. Considering the fact that the issue involved in the present Appeals have been decided in favour of the Assessee and against the Department for both the Assessment Years 2014-15 and 2015-16 in the case of Sh. Sudhir Dhingra and Sh. Anoop Thatai(supra) as the Department has not pointed out any difference in facts or circumstances and in the absence of or any other ratio laid down in favour of the Revenue, by following the

order of the Tribunal (supra), we allow the Appeal of the Assessee in ITA No. 5720/Del/2018 by deleting the addition made by the A.O. which has been sustained by the Ld. CIT(A) and dismiss the Appeal of the Revenue in ITA No. 6363/Del/2018.

Order pronounced in open Court on 16th December, 2024

Sd/-	Sd/-
(SHAMIM YAHYA)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 16/12/2024

R.N, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI